

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 93-0932 CSET and 95-0675 CSET
Controlled Substance Excise Tax – Imposition
Controlled Substance Excise Tax - Jeopardy Assessment
For Tax Period: November 19, 1993

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Controlled Substance Excise Tax — Imposition

Authority: IC 6-7-3-5; IC 35-48-1-11; IC 6-8.1-5-1

Taxpayer protests the imposition of the controlled substance excise tax.

II. Controlled Substance Excise Tax — Jeopardy Assessment

Authority: IC 6-7-3-13; IC 6-8.1-5-3; IC 6-8.1-8

Taxpayer protests the manner in which the Department collected the assessed tax liability.

STATEMENT OF FACTS

According to police reports, on November 10, 1993, police, using an informant, conducted a controlled buy of approximately one pound of a controlled substance - marijuana. The informant, using money that previously had been photocopied by the police, paid taxpayer for the marijuana at taxpayer's residence. The informant then proceeded to a second location, also owned by taxpayer (a rental house), to pick up the marijuana. After the buy was consummated, taxpayer and two other parties were arrested. In a search conducted at the time of taxpayer's arrest, the purchase money was discovered on taxpayer's person and on the premises of taxpayer's residence. During the search, police also seized bankbooks and other cash. A second

search, conducted at taxpayer's residence on November 18, 1993, led to the seizure of tax receipts, cancelled checks, gold coins, and other financial records.

Following taxpayer's arrest, the Department levied a jeopardy assessment on 450.4 grams of marijuana. At the statutory rate of \$40.00 per gram, the base tax deficiency amounted to \$18,016.00. With the addition of the statutory 100% penalty, taxpayer's total liability came to \$36,032.00. Upon taxpayer's nonpayment, the Department served a tax levy on the local police authorities who were in possession of taxpayer's assets. The Department collected \$25,024.47 and applied it to this assessment.

I. Controlled Substance Excise Tax – Imposition

DISCUSSION

Taxpayer argues that the controlled substance excise tax assessment was in error because taxpayer did not deliver, possess, or manufacture any controlled substances.

Pursuant to IC 6-7-3-5:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered;
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C 841 through 21 U.S.C. 852. The tax does not apply to a controlled substance that is distributed, manufactured, or dispensed by a person registered under IC 35-48-3.

Delivery is defined in IC 35-48-1-11:

- (1) an actual or constructive transfer from one (1) person to another of a controlled substance, whether or not there is an agency relationship; or
- (2) the organizing or supervising of an activity described in subdivision (1).

The evidence linking taxpayer to the delivery of the 450.4 grams of marijuana consisted of : (1) the testimony of the informant; (2) the police observations of the informant's actions; (3) taxpayer's telephone number on a pager belonging to a party who may have transported the marijuana to the informant at the "buy" location; (4) taxpayer's ownership of both houses involved in the purchase transaction; and (5) the presence of the "buy" money on taxpayer's person and at taxpayer's residence.

Taxpayer has offered several statements in support of his position. Taxpayer noted that the police report did not allege actual possession. Additionally, police observations did not directly link taxpayer to the marijuana. Drug paraphernalia was not found in the search of taxpayer's home. Telephone transcripts did not incriminate taxpayer. Codefendants did not make statements implicating taxpayer. Finally, taxpayer emphasized the fact that the person ultimately convicted for dealing the 450.4 grams of marijuana exonerated taxpayer.

However, taxpayer has failed to credibly explain how the photocopied "buy" money came into his possession. While taxpayer has implied that most of the money may have been planted, taxpayer has failed to produce any evidence in support of such a conclusion.

Pursuant to IC 6-8.1-5-1, the notice of proposed assessment is prima facie evidence that the Department's claim is valid. The burden of providing information rebutting this assessment rests with the taxpayer. While taxpayer has presented evidence regarding ancillary issues, taxpayer has failed to meet its burden of proof regarding this tax assessment.

FINDING

The taxpayer's protest is denied.

II. Controlled Substance Excise Tax — Jeopardy Assessment

DISCUSSION

Taxpayer protests the Department's method of acquiring taxpayer's assets to partially satisfy this jeopardy assessment.

All assessments under the controlled substance excise tax are jeopardy assessments pursuant to IC 6-7-3-13. Jeopardy assessments are immediately payable. If taxpayer fails to pay the assessment, immediate collection procedures are required. To collect the tax, the Department may issue a jeopardy warrant placing a lien on all the property of the taxpayer in the county where the paperwork was filed. The Department may also levy upon taxpayer's property held by third parties.

Based on a field test conducted by the Department, a jeopardy finding against taxpayer was made on November 19, 1993. Four days later, on November 23, 1993, a Jeopardy Assessment Notice and Demand for Payment was sent to taxpayer. Since taxpayer failed to respond, tax warrants were generated and subsequently filed with the Clerk and Sheriff of Monroe County on December 3, 1993. A Notice of Levy was then served on the local police department on April 13, 1994. As a result, \$25,024.47 in cashier's checks were received by the Department and applied to taxpayer's assessed liability.

The facts indicate that the Department followed proper procedures in its collection of the money that was applied to this assessment.

FINDING

The taxpayer's protest is denied.